REMARKS

Restriction/Election

In the May 6, 2009 Office Action, the Examiner imposed a restriction requirement under 37 CFR 1.499, wherein applicants are required to elect a single invention from the list below:

Group I:	Claims 1-8, 13, and 15, drawn to a chemical compound, a pharmaceutical composition, and a process for preparing a compound of formula I.
Group II:	Claim 16, drawn to a method of treating breast cancer using a chemical compound of formula I.
Group III:	Claim 16, drawn to a method of treating lung cancer using a chemical compound of formula I.
Group IV:	Claim 16, drawn to a method of treating colorectal cancer using a chemical compound of formula I.
Group V:	Claim 16, drawn to a method of treating pancreatic cancer using a chemical compound of formula I.
Group VI:	Claim 17, drawn to a method for antiviral treatment using a chemical compound of formula I.
Group VII:	Claim 17, drawn to a method for antiparasitic treatment using a chemical compound of formula I.
Group VIII:	Claim 17, drawn to a method for antifungal treatment using a chemical compound of formula I.

Applicants elect, with traverse, Group I (claims 1-8, 13, and 15), drawn to a chemical compound, a pharmaceutical composition, and a process for preparing said chemical compound.

The traversal is based on the fact that the rationale for restriction is in error. The Office Action states that "the inventions listed as Groups I-VIIII [sic] do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features . . ." (see page 3 of the Office Action). Applicants vigorously disagree. The European Patent Office (EPO), acting as the International Search Authority of the international patent application PCT/ES2005/070002, from which the pending U.S. application derives, has already reviewed the unity of invention issue and no objections on said requirement were ever issued. Therefore, the International Search Authority (ISA) has found that the present invention relates to "one invention only or to a group of inventions so linked as to form a single general inventive

concept" (PCT Rule 13.1). The Examiner has not mentioned any document relevant to the novelty or obviousness of the patent application and as such, the lack of unity of invention under PCT Rules 13.1 and 13.2 is not justified.

In conclusion, the EPO has applied the PCT rules to the present invention without finding a lack of unity of invention. Therefore, the USPTO cannot now apply a different standard to the present invention than the EPO.

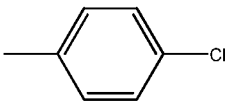
It therefore is requested that the restriction requirement be reconsidered, and that all claims 1-8, 13 and 15-17 be retained in consolidated form for further examination and prosecution on the merits.

If the restriction requirement is nonetheless made final, applicants alternatively request rejoinder of Groups II-VIII (method claims 16 and 17) as indicated by the Examiner in paragraph 10 of the Restriction Requirement (paragraph bridging pages 4-5). Applicants understand that method claims 16 and 17 would have to depend from or otherwise require all of the limitations of the allowable product claims.

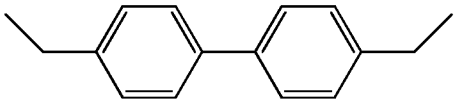
In the event that the Examiner does not withdraw the restriction requirement, applicants reserve the right to take any other measure as deemed appropriate, such as the filing of a divisional application, in order to protect the subject-matter of the non-elected claims.

Applicants were also required to elect a species of the generic invention, wherein the radicals defined by R_1, R_2, R_3, R_4, $R_{1'}$, $R_{2'}$, $R_{3'}$, $R_{4'}$, and A must be defined for examination. Applicants elect the following species:

$R_1 = R_{1'} = Me$

$R_2 = R_{2'} =$ 

$R_3, R_4 = R_{3'}, R_{4'} =$ —(CH=CH)$_2$—

A = 

Considered *in toto*, the species to be examined corresponds to Compound 7 (1,1'-biphenyl-4,4'-diylmethylene)bis[4-(4-chloro-N-methylanilino)quinolinium]dibromide).

Conclusion

Authorization is hereby given to charge any deficiency in applicable fees for this response to Deposit Account No. 13-4365 of Moore & Van Allen PLLC. If any additional issues remain, the Examiner is requested to contact the undersigned attorney at (919) 286-8000 to discuss same.

Respectfully submitted,

MOORE & VAN ALLEN PLLC

Date: June 8, 2009

By: _____

Tristan A. Fuierer
Registration No. 52,926
Moore & Van Allen PLLC
430 Davis Drive, Suite 500
Morrisville, NC 27560-6832
Telephone: (919) 286-8000
Facsimile: (919) 286-8199